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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement* submitted by the International Indian Treaty Council, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The right of Self-Determination of Peoples is a collective right, the matrix of all other human rights and fundamental freedoms for Indigenous Peoples. No other human right or fundamental freedom can be enjoyed by Indigenous Peoples, individually or collectively, without the enjoyment of the right to self-determination.

In all discussions concerning Indigenous Peoples in all UN fora, including this Commission, since 1942, even the names given to institutions and fora devoted to Indigenous Peoples have been controversial with regard to the word "peoples." We now have the Working Group on Indigenous Populations, the Permanent Forum for Indigenous Issues, and the Rapporteur on Human Rights and Indigenous Issues.[1] We have been drained of humanity and are now "issues."

We are told by some States that to recognize Indigenous Peoples as Peoples, even in name only, would lead to the breakup of the State or challenge their territorial integrity. Yet since the inception of colonialism to this day, the integrity of Indigenous lands and territories are invaded and violated with impunity. Even on Indigenous lands and territories that are not taken outright, the integrity of Indigenous natural resources and means of subsistence more often than not are ruined beyond redemption primarily as a result of international and national development schemes. This, in spite of pronouncements applying Part 2 of Article 1 in Common to Indigenous Peoples by the Human Rights Committee, the treaty monitoring body of the International Covenant on Civil and Political Rights.[2]

It is difficult for Indigenous Peoples to see how human rights instruments, not only the Declaration on the Rights of Indigenous Peoples, but such documents as the World Conference Against Racism Declaration and Programme of Action, could establish any right of succession or independence. Such a result itself would be contrary to well established international norms.[3] All Indigenous Peoples have asked of this Commission and the United Nations system is the recognition of our rights, not the violation of the rights of others.

Some States tell us that the right of Self Determination can be understood only in the de-colonization process, and that this process is over. According to these States, there is no more colonization. But the reality for Indigenous Peoples, the same rape, the same ruin only began over 500 years ago. Under the so-called liberalization of trade, for example, it appears to many of us that the natural resources traded liberally by transnationals are for the most part liberally extracted from Indigenous lands, without consultation or consent. This liberalized theft of Indigenous Peoples' property is a violation of the rights listed in Article 1 in Common, including the pursuit of our own social, cultural and economic development and a denial of our means of subsistence.

There is no doubt that Indigenous Peoples and their lands, territories and natural resources continue to be colonized in the full sense of the word.

Under the United Nations Charter it is the Sacred duty of every state to observe and promote the right of Self Determination of Peoples.[4] If a State gravely and persistently violates the human rights and fundamental freedoms of a peoples, it may lose its legitimacy. Succession from the state may be the only way of restoring denied rights and freedoms to oppressed peoples. The territorial integrity of the State thus is fully in the hands of the State itself.[5]

> By accepting its obligations, including full respect for the right of self-determination with all of its consequences, and engaging in dialogue with all sectors of society, a government can maintain the territorial integrity of the state or ensure that peaceful change occurs beneficial to

the state.[6]

For many Indigenous Peoples, the States' "separation anxiety" in reality is based upon a fear that the racism and paternalism inherent in the colonialist practices of exchanging vast riches of natural wealth for trinkets and beads, will end. It may be uncomfortable or even unthinkable to change a 500 year-old relationship, but change, even to racism and colonialism must come. It is not a matter of an academic right to separate from the State. It is a matter of survival for Indigenous Peoples.

Members of the Commission, the Office of the High Commissioner recently sponsored a Workshop Indigenous Peoples, Private Sector Natural Resource, Energy and Mining Companies and Human Rights, in Geneva, 5 –7 December, 2001. Although all Indigenous participants welcomed the opportunity to dialogue with extractive industries and States as much needed, they also all spoke of a common history and experience with extractive industries and States, a common experience of gross exploitation, colonialism and racism.

Even now, it is a common experience of bad faith and gross exploitation, of the destruction of cultures, lifeways and spirituality, a disregard and disrespect for traditional authorities, massive environmental destruction and social and economic ruin. In some States, attempts to call attention to their predicament or to promote the enjoyment of human rights has provoked reactions by the transnational concerned and the State, of militarization, extrajudicial executions, arbitrary detentions and gross and massive violations of basic human rights and fundamental freedoms.

It is a continuing history and experience of bad faith, coercion, manipulation and ruin.

Indigenous Peoples are aware that that change has overtaken our communities. We are also aware that Indigenous Peoples have internationally recognized rights to decide our own futures, to determine our own pace of development based upon our own vision of sustainable development. Whatever change must occur should occur in a manner that preserves culture, language and life views, and be must directed toward the preservation of our lands and territories, our spirituality and values. Changes or pace of change that will destroy us cannot be unilaterally imposed upon us by extractive industries or the State. Existing human rights standards must be respected and observed as a matter of obligation.

In keeping with well established international human rights standards, States and Multinationals must consult with Indigenous Peoples in all matters that may affect them, including State and multinational promoted development schemes, keeping in mind that such consultations must be carried out in good faith and require the free and informed consent of the Peoples affected before they can take effect or be implemented.

"Good Faith" includes, *inter alia*, the respect for and direct participation by traditional Indigenous authorities in the consultation process and in the expression of consent, in accordance with the traditional decision-making processes of the Peoples affected. It also includes complete, timely and truthful information concerning the proposed measures to be taken, with the provision of resources to the Peoples affected that they may have the means with which to interpret all data, including scientific data. To the fullest extent possible, at every stage of the proposed measures, timely direct and honest information must be provided to the Peoples affected, of the negative effects of such measures on the Indigenous community's lands, environment and natural resources, and their means of subsistence.

In order that Indigenous Peoples and Communities consent to any development projects that concern their lands, natural resources, environment and means of subsistence, certain enabling conditions must be found, including, serious efforts to address imbalances of power between States and multi-nationals, and Indigenous Peoples, to ensure that Indigenous Peoples have the means and capacity to fully participate. Prior informed consent can be truly informed and consensual only if consultations do NOT guarantee that agreement will be reached in the end.

In other words, Indigenous Peoples have the right to say "no" to extraction or any other unsustainable developmental scheme that would destroy them. Indigenous Peoples are the owners of their lands, as guaranteed by international law. It is they who are sharing the benefit of their own lands and resources. It is they who are being destroyed.

It is the all too common experience of Indigenous Peoples that where the State or transnational cannot reach their desired ends in consultation with local traditional authorities, they either find another group or individual with whom to consult, or merely implement their plans without consultation. Even now the World Bank, in spite of recent changes in their new proposed rules on forced relocation of Indigenous Peoples, would ultimately allow such relocations without the consent by the Peoples affected.

Unilateral actions by States and transnationals can only lead to conflict. They are already leading to gross and massive violations of human rights, and the destruction of our Peoples. The United Nations and this Commission must continue to open spaces for dialogue on these matters to the end that solutions consistent with established human rights standards be explored and found.

The International Indian Treaty Council welcomes the High Commissioner's continuation of these workshops with States, interested United Nations Agencies, including UNCTAD and the ILO, as well as extractive industries, that human rights and fundamental freedoms be considered in the relationship between these actors and Indigenous Peoples.

The IITC also calls upon the recently appointed Rapporteur on human rights and Indigenous issues to prioritize the destruction of Indigenous lands, territories and the taking natural resources, as well as the forced relocation of Indigenous Peoples based upon State or industry sponsored development schemes, in the exercise of his most welcome and important mandate.

For all our relations.

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[1] Human rights and indigenous issues, Commission on Human Rights resolution 2001/57, E/CN.4/RES/2001/57, 24 April 2001 (Hereinafter, "the Resolution"), part 1(a) and (b).

[2] Concluding Observations of the Human Rights Committee on Canada's Periodic Report, CCPR/C/79/Add.105, 7 April 1999; Concluding Observations on Norway's Periodic Report, CCPR/C/79/Add.109, October, 1999.

[3] See, eg. The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States.

[4] United Nations Charter, Article 1.2, Purposes; Article 55; Article 56.

[5] John B. Henriksen, Implementation of the Right of Self-Determination of Indigenous Peoples, Indigenous Affairs 3/01, pp.9-10, International Work Group for Indigenous Affairs (IWGIA), Marianne Jensen ed., Copenhagen, 2001.

[6] Nobel Laureate Jose Ramos Horta, quoted in Henriksen, id, p. 10.

[7] The phrase "separation anxiety" is taken from Diane F. Orentlicher, Separation Anxiety: International Responses to Ethno-Separatist Claims, 23 Yale J. Int'l L. (1998).